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IN THE

Supreme Court of the United States

Term, 1962

PETITION FOR CERTIORARI

No. .....

R. D. WILSON, THE ORDER OF RAILROAD TELEGRAPHERS, et als,

Petitioners,

vs.

G. E. LEIGHTY, et als,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fourth Circuit is not yet reported and is printed in the Appendix affixed hereto Number A.

The opinion of the District Court for the Eastern District of Virginia is printed in Appellee's appendix p. 3. The judgment of the Circuit Court of Appeals was entered on January 3.

NOTE: All references to appendix are to pages in the certified appendix of the Clerk of the United States Court of Appeals, except appendix A and Q which are hereto attached.

JURISDICTION

(Statutes Involved)

The jurisdiction of the Court is invoked under 28 U.S.C.A. § 1254 (1), 28 U.S.C. § 1337, and U.S. Supreme Court Rule 23, Federal Rules 12 and 56, and under the provisions of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C.A., § 411 and 412. Railway Labor Act 45 U.S.C. § 151, et seq.

Statutes involved, pertinent portions of Federal Rules of Civil Procedure, Rules 12 and 56, Railway Labor Act, 45 U.S. Code Annotated, § 151, et seq., and Labor Management Act are contained in Appendix O., and as set forth in the following cases:

Brady v. T.W.A., 174 F. Sup. 360
Brady v. T.W.A., 167 F. Sup. 469
Cherico v. Brotherhood, 167 F. Sup. 635.
Conley v. Gibson, 355 U.S. 41, 2 L.Ed. 2d, 80
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Tunstall v. Brotherhood of Locomotive Firemen & Enginemen, 323 U.S. 210, 89 L. Ed. 187
Zdanok v. Glidden Co., 288 F. 2d 99, p. 102, 103

The court also has jurisdiction on the authority of Title 49 Section 5(2)(f) requiring an equitable arrangement be made to protect the interests of the employees.

QUESTIONS PRESENTED

The present litigation had its origin in the absorption of the Virginian Railway Company by the Norfolk and Western Railway Company. The Norfolk and Western Railway had apparently agreed, through an agreement of June 18, 1959 (Appendix H) with the Railway Labor Executives Association, that no jobs would be abolished as a result of the merger if the representatives of the employees of the two railroads could agree to a method of integrating seniority but if such an agreement could not be reached then as an alternative the Norfolk and Western Railway would apply the protective provisions of the Washington Job Protection Agreement of 1936 to give security to the affected employees.

Division No. 14 of The Order of Railroad Telegraphers, representing the employees on the former Norfolk and Western Railway, and Division No. 13 of The Order of Railroad Telegraphers, representing the employes of the former Virginian Railway Company, could not agree on any method of integrating seniority rosters. Therefore, Division No. 14 maintained that the merged Norfolk and Western Railway should apply the provisions of the Washington Job Protection Agreement of 1936 (Appendix J) and that there could be no integration of seniority since the prior requirement of agreement between the two divisions was never realized.

The president of the Order, G. E. Leighty, insisted on integration of seniority and at the 1960 Grand Division Convention of The Order of Railroad Telegraphers, which meets every four years, secured the passage of a resolution (Appendix I), referred to as the June 24 Resolution, which purported to authorize the president to intervene in a dispute between two divisions overriding the General Chair-

man and General Committee of the division, the usual bargaining agents for a divisions.

The president intervened in two instances (1) in getting the railroad to agree to permit additional time for negotiations between the two divisions, and (2) in making a specific agreement with the Railroad with respect to integration of seniority. The action of the president in entering into the above two agreements and the validity of the resolution under which he received his alleged authority to act were immediately appealed to the Board of Directors of The Order of Railroad Telegraphers and from the decision of the Board to the Grand Division Convention, the highest authority of the Order, which meets again in 1964. In spite of the appeal, the president of the Order continued his negotiations and authorized the Railroad to proceed under the terms of the agreement he had made with the Railroad integrating seniority (Appendix E). As a result of the president's action, a notice of motion for injunction was brought in the Federal Court based upon the Labor Management Reporting Act of 1959 and the Railway Labor Act, to prevent the carrying out of this agreement until such time as there could be a hearing before the Grand Division Convention or until such time as a decision had been made by the Federal Courts. The questions presented are:

(1) Whether the agreement of August 31st (Appendix E), made by G. E. Leighty, President of The Order of Railroad Telegraphers, and the Norfolk and Western Railroad, is a valid binding agreement between the employees and employer.

(2) Whether the Labor Management and Disclosure Act of 1959, 29 U.S.C., §411 and 412, securing to the membership of a division of an industry the right to elect the person of its choice to represent it in collective bar-

gaining, matters within that division, can be obliterated by the action of the president or the Grand Division of The Order by supplanting the duly elected Collective Bargaining representative where the Order has no constitutional provisions providing for such action? More specifically under the facts of this case, whether or not R. D. Wilson, General Chairman of the General Committee of Division No. 14 duly elected under the provisions of the Constitution of The Order of Railroad Telegraphers and in compliance with the election procedures and guarantees provided in the Act, was the duly authorized collective bargaining agent for the Telegrapher's employed by the Norfolk and Western in Division No. 14 to the exclusion of the president of The Order of Railroad Telegraphers, or, stated in the alternative, whether or not the duly elected representative of a division of employees of a railroad can be supplanted and/or replaced by the president of a railway labor union where the only Collective Bargaining Agent that had ever been used, contacted or ever made agreements with the Railroad has been the General Chairman duly elected by the employees who has acted directly under and in compliance with his constitutional authority.

(3) Whether the Labor Management and Disclosure Act of 1959, 29 U.S.C., 411 and 412, giving authority to go to court where a delay of more than four months will take place before an administrative hearing can be held, applies to Railroad Labor Unions.

(4) Whether the courts have jurisdiction to resolve the validity of a collective bargaining contract where the contract is made by a representative not properly authorized to do so, and where there has been a failure to comply with the terms of the Railway Labor Act (Appendix Q.)

STATEMENT

On or about October 13, effective December 1, 1959, the Norfolk and Western Railroad merged into its railroad organization the Virginian Railway Company under an Order of the Interstate Commerce Commission, Finance Docket No. 20599. The name of the new merged railroad was, and is, the Norfolk and Western Railway Company.

Some several months prior to the effective date of the merger an organization called the Railway Labor Executives Association, which was an organization which consisted of the presidents of various labor unions who had men working on the Norfolk and Western Railway and the Virginian Railway Company, met and made an agreement with the Norfolk and Western Railway Company relative to the employment of their various members. A copy of this agreement (commonly called the Agreement of June 18) is attached hereto and made a part of this brief as Appendix H). This agreement did not make any specific arrangement for taking into the Norfolk and Western Railway the Virginian Railway employees who belonged to Division No. 13 of the Order of Railroad Telegraphers Union. At that time no specific arrangement was made to handle the question of seniority. The June 18 Agreement provided that the Railroad would preserve jobs for the employees or pay for time lost if the representatives of the employees on the two railroads could agree to a method of integrating seniority, but if the option extended by the railroad to the employees to integrate seniority was not accepted then as an alternative the Norfolk and Western Railway Company would apply those protective provisions set forth in the Washington Job Protection Agreement of 1936 for the benefit of the affected employees (Appendix J).

During that period of time and after the merger was effective, the members of Division No. 14 of The Order of Railroad Telegraphers and Division No. 13 of The Order of Railroad Telegraphers could not reach an agreement as to integrating seniority. No agreement has been reached as yet by these principals as to integrating seniority. In order to allow Division No. 13 maximum time in which to accept the plan offered by Division No. 14 the latter division entered into a certain Interim Agreement with Division No. 13 dated December 2, 1959 (Appendix F). This Interim Agreement had the effect of extending the time in which the two divisions could come to an agreement on integrating seniority prior to a certain deadline set up by the Railroad. It was duly signed by R. D. Wilson, General Chairman, The Order of Railroad Telegraphers, Norfolk & Western Railway and by P. E. Painter, General Chairman, The Order of Railroad Telegraphers, The Virginian Railway Company and by H. C. Wyatt, Vice President & General Manager, Norfolk & Western Railway Company. Then on March 23, 1960 G. E. Leighty, without the approval or consent of R. D. Wilson, entered into an agreement with the Railroad for the purpose of making certain changes in the wording of the orginal interim agreement and extending the terminating date to August 1, 1960 later changed to September 30, 1960 (Appendix G).

The Grand Division Convention of The Order of Railroad Telegraphers convened in June of 1960. On June 24, which was the last day of that convention, a resolution was passed purportedly giving certain powers to G. E. Leighty. Those powers are stated in a copy of Resolution dated June 24, and found in Appendix I. Under that Resolution G. E. Leighty was allegedly authorized to settle disputes between the two divisions on "a basis

of preserving the equity of the employes or members affected in the performance of the remaining work under the changed conditions insofar as it is possible to do so." The Resolution itself did not give G. E. Leighty authority to destroy existing seniority rights accumulated and established by the affected employees.

Under the alleged authority of the June 24 Resolution G. E. Leighty entered into an agreement with the Norfolk and Western Railway dated August 31, 1960 (Appendix E) integrating on a dovetail basis the seniority dates of the employees on the Norfolk and Radford seniority divisions of the former Norfolk and Western Railway, represented by R. D. Wilson, with the employees on the Norfolk and New River seniority divisions of the former Virginian Railway, represented by P. E. Painter, General Chairman This was done without the authority or consent of R. D. Wilson, General Chairman, Division No. 14.

R. D. Wilson, General Chairman, Division No. 14, The Order of Railroad Telegraphers filed an original appeal on September 17, 1960 and a supplemental appeal thereto on October 17, 1960 to the Board of Directors of the Order to the action taken by G. E Leighty under the appeal provisions of the Constitution of the Order Article XV Sec. 4 (Appendix L) asserting as grounds for the appeal that G E. Leighty had exceeded his authority under the constitution of the Order and that the Resolution under which he asserted authority to act was not adopted in compliance with and was contrary to the provisions contained in the constitution of the Order. The Board of Directors upheld the president and then R. D. Wilson appealed the Board's decision to the Grand Division Convention which next convenes in 1964 under Article XV Section 5 (Appendix L). The constitution of

the Order states that the "The decision of the Grand Division Convention on any appeal shall be final and binding", Article XV Section 5. The constitution also states that the decision of the Board of Directors will be stayed and the penalty shall be inoperative pending decision on further appeal, Article XV Section 4 B. (Appendix I.) Despite the above rules securing certain rights to R. D. Wilson, General Chairman and the membership he represents on Division No. 14, G. E. Leighty has entered into a contract with the Railroad which deprives the membership of a vested right, that none of these rules can be taken from them without due process, that is, the right to exhaust the appeal procedure within the Order or have the court construe the validity of the contract entered into by G. E. Leighty by making a determination of his authority to supplant the duly elected collective bargaining agent of the membership of Division No. 14.

A bill of Complaint and Petition for Injunction were filed on January 13, 1961, and the Complaint was amended on February 2, 1961. A temporary Restraining Order was entered by the District Court on January 13, which was extended by agreement of the parties until February 7, 1961.

On February 6, 1961, defendants, G. E. Leighty and the Norfolk and Western Railway and others, led a joint action to dismiss the action under Rule 12B of the Federal Rules of Civil Procedure, or, in the alternative, grant defendant Summary Judgment under Rule 56 B & C.

A hearing was held on February 7, 1961, before the District Court. Certain oral testimony was taken and thereafter on that day the Honorable Judge Albert V. Bryan delivered from the bench a statement of his findings and conclusions of law, a copy of which is attached here

as Appendix B, granting the defendants' Motion for Summary Judgment and dissolving the temporary restraining Order and dismissing the suit.

On February 16, 1961, written Findings of Fact and Conclusions of Law were filed. On March 3, 1961, the District Court filed its Final Judgment Order and Decree. Thereafter, the Division No. 14 et als filed an appeal to the United States Court of Appeals for the Fourth Circuit. An oral hearing was had on October 12, 1961, and a decision was rendered on January 3, 1962, a copy of which is duly attached as Appendix A.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it refused to recognize the validity of the Labor Management and Disclosure Act of 1959 and its application to the facts of this situation. The court below focused attention on The Railway Labor Act and the Court's interpretations of that Act prior to the passage of the Labor Management and Disclosure Act of 1959. In so doing, the intent of Congress manifest in the Act of 1959 that membership of unions should have the right to elect the person to represent them in a fair and lawfully conducted election is overlooked. This intent of Congress is meaningless if, after all safeguards imposed by law are applied during the election, the president of the union can supplant the duly elected representative in order to enter into an agreement with the Railroad that is opposed by the entire membership and which is seriously detrimental to that membership.

The Labor Management and Disclosure Act was passed to protect labor from abuse within its own organ-

ization and where such abuses are alleged by a member or the membership it clearly states that where the administrative processes within the union take longer than four months the United States District Court has jurisdiction. It was certainly the intention of the Congress to prevent just exactly what has happened here—a four year delay before the union members can complete the appeal procedures within the union. Labor Management Act, §411 (4), Title 29, U.S.C.A.

The Court's attention is brought also to Title 29, §411, wherein express provisions are made for the bringing of a suit, including injunctions, in the District Court of the United States for relief against violations of any of the rights preserved by that chapter. Again, when the District Court says that there is no right, privilege or obligation arising under that act to bring these parties into this Court's jurisdiction, I respectfully call the Court's attention to that section of R.L.A., which says (Title 45, §152 par. 6) that certain rules and regulations made it the duty of the "designated representative or representatives of such carrier, or carriers, and of such employees", to take certain action. We submit that there is no question that R. D. Wilson was the designated representative of The Norfolk and Western Railway, Division No. 14. Paragraph 7 of §152 states that no action shall be taken changing rates of pay, rules, etc., except as in accordance with this law or the agreement duly made.

It appears obvious from the very intent of the Congress in passing the Labor Management and Disclosure Act that delays of over four months give automatic access to the Federal Courts for the solution of these problems.

The decisions of the court below in refusing to consider this have clearly presented a problem that should

be resolved by this court. This matter was presented to the Court of Appeals in the arguments before the court. It was specifically mentioned by Judge Bryan in his District Court opinion, but he made no decision on it. It is noted that the Court of Appeals did not consider this question in its opinion.

This question, of course, is obviously of great importance in interpreting the law in this cause and in future cases. What could be more essential than a construction by this court of just what is meant by the so-called Four Months Rule under §411 3(b)4, and the Protection of the Right to Sue clauses in this section?

The law there expressly provides "that any such member may be required to exhaust reasonable hearing procedures (but not to exceed the four months lapse of time) within such organization before instituting legal or administrative proceedings against such organizations or any officer thereof". In §412 the law particularly states as follows: "Any person whose rights secured by a provision of the sub-chapter may bring a civil action in the District Court of the United States for such relief (including injunctions) as may be appropriate." It becomes obvious that an appeal from a resolution adopted in 1960 and an appeal from the action of the president of the Order in entering into the August 31, 1960 Agreement definitely is before the court if a 1964 Grand Division Convention, the only administrative body left to pass on it, could not be held within the four months time, and that is why the matter was brought before the lower court.

The Railway Labor Act, Title 29, §151, paragraph 6, states as follows:

> "The term representative means any person or persons, labor union, organization or corporation, designated

> either by a carrier or group of carriers or by *its or their employees*, to act for it or them."

It must be strongly emphasized before this court that when the members of Division No. 14 voted to elect a Collective Bargaining Agent they did not vote to elect the president of the National Union as their Collective Bargaining Agent. They voted for that which was provided for them in their constitution, and is provided for now in their constitution, that the General Chairman of the General Committee is and shall be their Bargaining Agent.*

The Railroad cannot arbitrarily elect to negotiate with the General Chairman when it is to its advantage, then switch to negotiations with G. E. Leighty when it is advantageous to do so. All of the Railroad's past negotiations have been with the General Chairman of Division No. 14, and any attempt to negotiate with any other person or group requires the Railroad to give notice to the General Committee of Division No. 14 that it is going to make a change in its collective bargaining process under the notice requirements of the Railway Labor Act.

> "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

The Railway Labor Act, as such, is an integral and inherent part of the working agreement, and any change in that working agreement automatically involves the Railway Labor Act and violations as herein alleged. For instance, (1) no conference, as prescribed in 152 (6), Railway Labor Act; (2) changes not made as prescribed

*Childers v. Brotherhood of R.R. 192 F. 2d 956; General Committee v. Missouri KTR Co. 320 U.S. 323, 88 L.Ed. 76.

in agreement or under law; (3) interference with action of the employees by the carrier through influence, §152 (4); (4) lack of a conference with representative authorized to confer, etc.; (5) failure to give appropriate notice.

No such notice was given, as is set out in the testimony of R. D. Wilson, General Chairman, Division No. 14.

The June 18, 1959, Merger Agreement, approved by the Interstate Commerce Commission, set out as its basic objective that of requiring the Norfolk and Western Railway Company to save the employees from any adverse affects resulting from the merger. It was the intent of the I. C. C. order to require the Railroad to bear the cost of the merger and not to shift this burden to the employees on the Norfolk and Radford Divisions of the Norfolk and Western Railway by forcing these employees to yield up their seniority and out of that seniority to make the affected Virginian employees whole. The Railroad and G. E. Leighty acted in a concerted manner under the August 31, 1960, Agreement to discriminate against the employees on the Norfolk and Radford Divisions by attempting to force upon this group of approximately 200 former Norfolk and Western employees the burden entailed in the destruction of their seniority rights while there were approximately 300 additional Norfolk and Western employees employed on the Shenandoah, Pocahontas and Scioto Divisions in the same category whose seniority rights remain unimpaired. The advantages of the merger accrued to the entire Norfolk and Western Railway, but the Railroad and G. E. Leighty have abusively made use of the August 31, 1960, Agreement to destroy the seniority rights of the employees on the Norfolk and Radford Divisions alone.

The decision below should be reviewed because of the conflict between the District Court and the Circuit

Court decisions. Judge Albert V. Bryan held that the moving parties in this cause should proceed before the National Railroad Adjustment Board and the decision of the Circuit Court of Appeals, Fourth Circuit, held that the moving parties in this cause should proceed before the National Mediation Board. The decision of the Fourth Circuit sustained the position of the plaintiffs before the District Court that the National Railroad Adjustment Board was not the proper body to make a determination of the issues of this case, since it is not constituted so as to construe the authority of the president of the Order to act under the constitution and by-laws of the Order, or where three parties were envolved. However, the decision of the Fourth Circuit that the National Mediation Board is the proper body to make a determination of the issues placed Division No. 14 in the position of having a forum but no means of enforcing the decision of that forum since the Board does not need to certify who has been elected by the membership of Division No. 14 to represent them in collective bargaining. It is not denied by G. E. Leighty or the Grand Division that R. D. Wilson is the duly elected representative of the membership of Division No. 14, and as General Chairman has represented the membership as the chief collective bargaining agent on the Norfolk and Western Railway for many years. The constitution of The Order of Railroad Telegraphers does not contain any provision providing for or implying that the national organization of the Order or its president may deprive the membership of a division the right to elect its chief collective bargaining agent or to deprive the membership of the collective bargaining services of the General Chairman when once elected. G. E. Leighty has exceeded his authority under the constitution of the Order by entering into the August 31 Agreement with the Railroad without

the consent of and over the protests of the General Chairman. G. E. Leighty has at no time been elected or authorized by the membership of Division No. 14 to represent it or enter into any agreements with the Railroad. This presents a question of the validity of the August 31 Agreement for the court to determine and not for the National Mediation Board.

In the Fifth Circuit, in the case of *Order of Railway Conductors and Brakemen v. Switchmen's Union*, 269 F 2d 726, the court there held it had jurisdiction to settle the dispute similar to this because it viewed the conditions concerning the underlying validity of the contract and not its interpretation.

Nothing could be a more accurate description of the problem in this case where the contract was being made by a party who had no authority to make it. As is said in *Railroad Trainmen v. Howard*, 343 U.S. 768 p. 774, the District Courts do have jurisdiction to determine the validity of a bargaining agreement.

The interpretation of the circuit court as to what constitutes a jurisdictional dispute between the union and between groups of employees is not valid as applied to the facts of this case. The decision in the case of *Railroad Trainmen v. Howard*, 340 U.S. 768, is certainly distinctly in point on this question as to determining the validity of a bargaining agreement, which is exactly the question before the court, and it is not a question of a representation dispute. In this case the Railroad and G. E. Leighty are and have been actively attempting to shift the cost of the merger from the Railroad to the shoulders of the membership represented by R. D. Wilson on the Norfolk and Radford divisions by requiring those employees to

make the Virginian Railway employees whole out of their own accumulated seniority rights. The Railroad in the June 18 Merger Agreement guaranteed continued employment or appropriate pay to the Virginian Railway employees, not seniority. (Amended Bill of Complaint, para. 13, (Appendix M) Memorandum Agreement August 31, 1960 (Appendix E).

The Circuit Court of Appeals determined that this was what is called an Intra-Union Representation Dispute and not properly before the District Court. There is, however, a distinct conflict of opinion between the Fourth Circuit in this case and decisions in the Third Circuit, Fifth Circuit and Sixth Circuit, following *Railroad Trainmen v. Howard*, 343 U.S. 768, 774 (1952); Virginian Ry. v. Federation, 300 U.S. 515 (1937); Railroad Yardmaster v. Pennsylvania RR, 224 F. 2d 226 (3rd Circ. 1955); Order of Railway Cond. & Brake. v. Switchman's Union, 269 F. 2d 726 (5th Circ. 1959); Brother. of Railroad Trainmen v. Smith, 251 F. 2d 282 (6th Circ. 1958); Mount v. Grand Int'l. Bro. of Loc. Eng., 226 F. 2d 604 (6th Circ.) Cert. denied, 350 U.S. 967. See also Switchman's Union v. Board, 320 U.S. 297, General Committee v. So. Pacific, 320 U.S. 338.

Attention is called to the fact that these disputes arising out of seniority and cross-representation between various and sundry unions have an immediate and frequently a disastrous effect upon the people who work for the railroads. There are now contemplated many additional mergers in which many of these issues will arise again and again and it would appear that the necessity for a clear cut decision resolving these many difficulties as to who, what and when, with relation to the representation of unions under the Railway Labor Act and the Labor Management Disclosure Act should be determined.

CONCLUSION

For the foregoing reasons, it is believed that a Writ of Certiorari should be granted.

L. S. Parsons, Jr.

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Cases also showing conflicts between Circuits:

Bro. of Loc. F. & Eng. v. Central of Ga. & BRT, 199 F. 2d 884 (5th Cir.)

Colbert v. BRT & Pac. Elec., 206 F. 2d 9 (9th Cir.), Cert. denied, 346 U.S. 931.

Pulliam v. Bro. of Ry. & Steamship Clks., 217 F. 2d 205 (5th Cir.), Cert. denied, 349 U.S. 912.

Spires v. So. Ry. C. & B. of LE., 204 F. 2d 450 (4th Cir.) (overruled in Conley v. Gibson, supra).

APPENDIX A

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 8357

Division No. 14, The Order of Railroad Telegraphers, by R. D. Wilson, et als, for use and benefit of all persons similarly situated,
Appellants

versus

G. E. Leighty, President, The Order of Railroad Telegraphers, H. C. Wyatt, Vice-President and General Manager of Norfolk and Western Railway Company, and Norfolk & Western Railway Company,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
ALBERT V. BRYAN, DISTRICT JUDGE.

(Argued October 12, 1961. Decided January 3, 1962.)

Before SOBELOFF, Chief Judge, and SOPER and BOREMAN, Circuit Judges.

L. S. Parsons, Jr., (Parsons, Stant and Parsons on brief) for Appellants; and A. Paul Funkhouser for the Appellees, Wyatt and Norfolk & Western Railway Company; and Edward J. Hickey, Jr., for the Appellee, Leighty, (Joseph L. Kelly, Jr., and Moses Ehrenworth on brief).

SOBELOFF, Chief Judge:

A problem that almost inevitably arises when railroads are merged is how to integrate the seniority rights of the employees of the component roads. One of the commonplace objectives of a merger is to effect more economical and efficient performance through operating changes. Usually some of the operations of one or the other of the merging railroads are abandoned, and employees are displaced from their customary positions. Congress foresaw just such possibilities when it enacted that the I.C.C., before approving a merger, "shall require a fair and equitable arrangement to protect the interests of the railroad employees affected." 49 U.S.C.A. § 5 (2) (f). The I.C.C. has followed the entirely reasonable practice of looking to the employees' bargaining representatives for some measure of guidance. Sometimes, however, while the railroad is indifferent as to how the competing interests of the individual employees are to be adjusted and stands ready to put into operation any arrangement acceptable to the employees, the latter find themselves unable to agree. This is such a case.

The present litigation has its origin in the absorption of the Virginian Railway Company by the Norfolk & Western Railway Company. The telegraphers formerly employed by the Virginian, the "merged railroad," are represented by Division 13 of The Order of Railroad Telegraphers, while those who before the merger were, and still are, Norfolk & Western employees are affiliated with Division 14. The railroad had tentatively agreed that no jobs would be abolished by reason of the merger if the seniority rosters of the two Divisions were integrated in respect to future jobs. However, the two Divisions could not

agree on the manner of accomplishing the integration. The dispute centered around the fact that most if not all of the future job opportunities would be on the property of the old Norfolk & Western, to which Division 14 members formerly enjoyed exclusive access. For this reason, Division 14 contended for an integration plan which would deny to Division 13 members any credit for "old" seniority on the Virginian Railway when they bid for jobs outside their old seniority district. This plan, known as homesteading, was to have the same effect on the seniority rights of the members of Division 14 when they bid for jobs on the old Virginian property, but it was, for the reason above state, reciprocal in theory only. On the other hand, Division 13 apparently insisted upon a plan, called dovetailing, whereby accrued seniority of all employees would be maintained no matter what jobs were being bid for.

This controversy had not been settled when the Grand Division Convention, described as the "summit of power of the telegrapher's order," met in June of 1960. The Convention authorized the national president, Mr. Leighty, to resolve the dispute, but his efforts at conciliation failed. On August 31, 1960, Mr. Leighty, acting for the national order, entered into a collective bargaining agreement with the railroad embodying a compromise between the extreme positions of the two Divisions. It provided for integration of the seniority rosters of the two Divisions by dovetailing, but required the former Virginian employees to exhaust their job opportunities on their old district before exercising seniority bidding or "displacement rights on the Norfolk & Western vacancies or new positions." Division 14 took an appeal, as permitted in the Convention's resolution under which Mr. Leighty acted, to the Board of Directors which governs between conventions. This body

unanimously affirmed the president's action, and an appeal was then noted to the Grand Division Convention which is scheduled to meet in 1964.

On January 13, 1961, District 14 instituted the present suit in the United States District Court for the Eastern District of Virginia. The plaintiffs sought a permanent injunction against the railroad and the parent union to prevent them from acting under the August 31 agreement and, in the alternative, a temporary injunction until the plaintiffs could be heard by the 1964 Grand Division Convention. The District Court dismissed the complaint, both for want of jurisdiction and on the merits. This is the appeal from that action.

The contentions of Division 14 here are the same as before the intra-union agency and the District Court—that its members should not be detrimentally affected by the merger and that the August 31 agreement is unfair because its members will lose job opportunities without, as a practical matter, gaining rights in return. The essential legal argument is that the settlement achieved by the national order through its president, Mr. Leighty, is invalid because the railroad should have bargained with Division 14 rather than with the parent body. Reliance is placed on Article XI, section 16(c) of the union constitution[1] and Rule 18 of the working agreement[2] between

[1] This section vests the divisions with authority to "negotiate, make, establish and administer collective bargaining agreements governing wages, rules and working conditions" but also restricts division authority to matters which are strictly intra-divisional. Also, any agreement between a division and the railroad must be approved by the President of the Order.

[2] Rule 18 provides: "Seniority rights of men on newly acquired lines shall date on the seniority district to which they become attached only from date of consolidation. In like manner seniority rights of men on the seniority district

Division 14 and Norfolk & Western.* We do not reach the merits of this argument, having concluded that this is an intra-union representation dispute and hence not justiciable in the District Court.

The legislative history of the Railway Labor Act, 45 U.S.C.A. § 151 et seq. is carefully traced in *Switchmen's Union* v. *Board*, 320 U.S. 297 (1943); *General Committee* v. *M.-K.-T. R.*, 320 U.S. 323 (1943); and *General Committee* v. *Southern Pacific Co.*, 320 U.S. 338 (1943). This trilogy of cases authoritatively determines that judicial intervention in railway labor disputes is restricted to the narrowest scope; that large segments of this field remain subject to the voluntary processes of conciliation, mediation and arbitration; that particularly in representation disputes the adjudicatory function has been committed by Congress to the National Mediation Board; and that the services of this Board may be invoked for the adjustment of grievances and disputes arising between a railroad and its employees concerning changes in rates of pay, rules, or working conditions not adjusted in conference and not referable to the Railroad Adjustment Board.

The *General Committee* cases involved disputes between two certified unions, each claiming the authority to treat with the railroad on a particular issue. The railroad having bargained with one, the other brought suit in the District Court to set aside the ensuing contract. The argument

adopting such line shall apply on the adopted line only from date of consolidation." The plaintiffs do not argue that this provision is not subject to change; they maintain only that the national order had no power to make the change unilaterally.

*At oral argument, counsel for Division 14 attacked the collective agreement as unfair in operation, but did not assert bad faith or that his clients had been hostilely discriminated against.

was pressed that the contract was invalid because it had been entered into by the railroad with the wrong employee representative and that the District Court had jurisdiction to decide the case because the railroad had thereby violated the express mandate of the Railway Labor Act requiring bargaining with the true employee representative.[4] In rejecting this argument, the Court reasoned that it was clear "from the legislative history of § 2, Ninth [45 U.S.C.A. § 152, Ninth, which vests the Mediation Board with jurisdiction to resolve representation disputes] that it was designed not only to help free the unions from the influence, coercion and control of the carriers but also to resolve a wide range of jurisdictional disputes between unions or between groups of employees." The Court went on to say that "[h]owever wide may be the range of jurisdictional disputes embraced within § 2, Ninth, Congress did not select the courts to resolve them," but "[t]o the c o n t r a r y, it fashioned an administrative remedy [which] is exclusive." 320 U.S. at 336. The Court ordered dismissal of the cases by the District Court for want of jurisdiction.[5]

These decisions furnish the controlling directive for our disposition of the present case. Indeed, Division 14 makes the precise argument to establish federal court jurisdiction that was there rejected by the Court. Although here two separate unions are not involved, the dispute is nonetheless a representational one which falls well within the range of the Court's holding in the *General Committee* cases.

[4] See 45 U.S.C.A. § 152, Ninth.

[5] Decisions of the Supreme Court subsequent to the *General Committee* cases establish that the National Railroad Adjustment Board is the forum in which jurisdictional disputes should be litigated if they depend for resolution upon an interpretation of existing bargaining agreements. See *Order of Conductors v. Pitney*, 326 U.S. [illegible] (1946); *Slocum v. Delaware, L. & W. R.*, 339 U.S. 239 (1950).

We must decline to follow decisions of lower courts to the contrary, *Railroad Yardmasters* v. *Pennsylvania R.*, 224 F.2d 226 (3rd Cir. 1955); *Order of Railway Cond. & Brake.* v. *Switchmen's Union*, 269 F.2d 726 (5th Cir. 1959). In the Fifth Circuit case the question presented was whether the contract between the railroad and the Switchmen's Union was valid since no notice of the negotiations was given to the Brotherhood of Railroad Trainmen. The controlling issue was, as the Fifth Circuit recognized, whether Brotherhood of Railroad Trainmen or Switchmen's Union was the proper representative. The court held that it had jurisdiction to settle the dispute because it viewed the issue as concerning the underlying validity of the contract, and not its interpretation.[6] The same reasoning appears in the Third Circuit case. Both courts place principal reliance on the language of the Supreme Court in *Railroad Trainmen* v. *Howard*, 343 U.S. 768, 774 (1952), to the effect that district courts have jurisdiction to determine the "validity" of a bargaining agreement. However, *Howard* dealt with an agreement directly violative of the Act, and in view of the *General Committee* cases, the conclusion is inescapable that district courts have no such authority where "validity" of the contract depends upon the merits of a representation dispute.[7]

[6] The court viewed the case as not requiring adjudication of a representation dispute, and, therefore, within the rule of *Virginia Ry.* v. *Federation*, 300 U.S. 515 (1937), see footnote 7, *infra*. However, it is apparent from the opinion that there was some doubt as to the bargaining authority of the Switchmen's Union.

[7] The only circuit court case found in which the *General Committee* cases were considered in the context of an alleged representation dispute is *Brotherhood of Railroad Trainmen* v. *Smith*, 251 F.2d 282 (6th Cir. 1958). There the court recognized the force of the Supreme Court cases, but convincingly demonstrated that no real representation dispute was involved in its case. The Mediation Board had certified the Order of Railway Conductors and

It is suggested that an injunction would merely maintain the status quo pending an ultimate decision by the Convention in 1964. However, an injunction could have no such neutral effect here. It would not merely hold the line, without injury to either party, pending Convention action. Rather, it would reverse irretrievably for the intervening period the action of the Board of Directors and the president, and give to Division 14 the rights it claims to the exclusion of Division 13. Whatever merits this solution may have, a court injunction would not be an act of neutrality.

On the face of things, it would seem appropriate and consistent with national labor policy for a parent labor organization to undertake through its own organizational machinery to remove internal tensions by resolving disputes between two of its subordinate bodies pressing competing claims to work opportunities for their respective members. However, if these intra-organizational efforts are challenged, Board action, not judicial intervention, is indicated.

Brakemen as the representative of the conductors and the Brotherhood of Railroad Trainmen as the representative of the trainmen, but Brotherhood of Railroad Trainmen undertook to bargain with the railroad in respect to the seniority rights of conductors. The facts, therefore, brought the case within the purview of *Virginian Ry.* v. *Federation*, 300 U.S. 515 (1937), where the Court held that the District Court had jurisdiction to enjoin a contract entered into between the railroad and a company union in disregard of the Federation which had been certified by the Board as the employee representative.

It may also be noted that the Seventh Circuit has held that an intra-union representation dispute which depends for resolution upon an interpretation of the union constitution should be litigated in the state rather than the federal courts. *See Peterson* v. *Brotherhood of Locomotive Fire. & Eng.*, 272 F.2d 115 (7th Cir. 1959). This conclusion may be at variance with the statute which has vested the Mediation Board with *exclusive* jurisdiction to resolve representation disputes. In any event, that circuit agrees that the federal district courts are without jurisdiction in such matters.

For these reasons the order of the District Court dismissing the complaint is

Affirmed.

APPENDIX Q

Railway Labor Act 45 U.S.C. § 156 Section 6:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working condition, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."